

PUBLIC LAW BOARD NO. 6942

UNITED TRANSPORTATION UNION

and

NMB No. 13

AWARD No. 13

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM

North Platte Yardman B.D. Sellers ("Claimant") seeks removal of a 5 day suspension and Level 2 discipline plus pay for all lost time and benefits. He raises substantive, but no procedural, issues.

FINDINGS

After review of the entire record, the Board finds the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over this dispute; and, the parties were given due and proper notice of the hearing.

Claimant was charged with violating General Code of Operating Rules ("GCOR") 6.5, Handling Cars Ahead of Engine. Following a formal investigation, the Carrier assessed Level 2 discipline, with actual 5 day suspension, for failure to take proper precautions to prevent cars from being shoved to block other tracks, resulting in 2 freight cars colliding in the East Bowl at approximately 4:00 a.m. on February 12, 2005.

Before coupling Bowl track 29, Claimant, working as Hump Trim Foreman on the P45R job, asked the hump Foreman to block tracks 29 and 30 so he would be protected as he worked between cars to prepare them for movement. He was told the tracks were blocked. He did not ask if the west end was full but assumed it was after reading his track list. Blocking is accomplished by lining the switch at the track entrance in reverse position to direct railcars to other tracks. A track can not be blocked if a car is out to foul.

While Claimant controlled movement in Bowl 29 with his control belt pack, the west car was shoved west to foul other Bowl tracks. The warning devices at the hump did not sound. Claimant did not directly control the railcars that shoved to foul.

Still, Claimant knew the length of the rail and that it was near capacity. He did not know or attempt to determine the position of the Bowl 29 west car by walking approximately 3 car lengths to look or by any other method. He did not ask the hump Foreman about conditions at the west end. He did not ask the East hump to stop bumping or to watch the west end to assure he did not foul the lead. When asked what he did to protect the west end, he said only that he tried only to make easy hooks. During the investigation he said he shoved cars past the fouling point; and, at the hearing, he said he "probably" did it but did not then know any car was foul and does not now know how it happened.

On this record, any failure of the Investigator to ask the hump Foremen if he noticed anything extraordinary or to produce computer information to discount Claimant's beliefs are irrelevant.

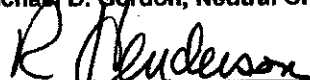
There is little doubt a car fouled the track. Claimant controlled the movement. He allowed a car to be shoved west improperly and did not notify the hump Foreman after it happened. He did not tie the handbreak on the western most railcar and did not call an additional job briefing. Evidence of Claimant's negligent inaction in preventing the mishap is adequate whatever evidence might show about the action of others.

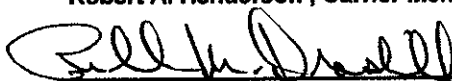
Under the circumstances, the weight of substantial evidence shows Claimant failed to take adequate precautions to prevent cars from being shoved out the west end. He violated GCOR 6.5's requirement that "When cars or engines are shoved and conditions require, a crew member must provide protection for the movement. Cars or engines must not be shoved to block other tracks until it is safe to do so. . . . When cars or engines are shoved and conditions require, a crew member must provide protection for the movement. Cars or engines must not be shoved to block other tracks until it is safe to do so." Given the seriousness of the violation, the discipline assessed was justified.

AWARD

Claim denied.


Michael D. Gordon, Neutral Chairman


Robert A. Henderson, Carrier Member


Richard M. Draskovich, Organization Member

AWARD DATE: 6-6-06